Introduced by Senator Schiff

February 25, 2000

An act to amend Sections 8714, 8714.5, 8714.7, and 8715 of the Family Code, and to add Section 366.265 to amend Section 358.1 of the Welfare and Institutions Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

SB 2157, as amended, Schiff. Postadoption contact agreements.

Under existing law, when an adoption petition is granted and the adopting parent is a relative of the child or a relative of the child's half-sibling, a written agreement, designated as a "kinship adoption agreement," may be executed to permit continuing contact between the birth relatives and the child, as specified. Existing law also requires the State Department of Social Services or licensed adoption agency, whichever is a party to or joins in the petition for adoption, to submit a report addressing the facts of an adoption case; where there is a kinship adoption agreement, the report must also address whether the kinship adoption agreement is in the best interest of the child. A licensed adoption agency includes licensed county adoption agencies for purposes of these provisions.

Existing law provides that a child may be adjudged a dependent child of the juvenile court on the basis of abuse or neglect.

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This bill would instead designate those agreements as "postadoption contact agreements." The bill would make these provisions applicable where the child is a dependent child of the juvenile court regardless of whether the adopting parent is a relative of the child or a relative of the child's half-sibling. The bill would require that a postadoption contact agreement be attached to and filed with the petition for adoption. The By authorizing agreements in additional cases, the instances in which local adoption agencies would be required to consider the effect of these agreements in connection with the adoption reports would be increased, thus creating a state-mandated local program.

Existing law provides that a child may be adjudged a dependent child of the juvenile court on the basis of abuse or neglect. Before determining the appropriate disposition of a dependent child, existing law requires the court to receive in evidence a specified social study that includes a discussion of, among other things, whether the parent has been advised of his or her right to participate in adoption planning.

This bill would also authorize the court, prior to a hearing to free a dependent child of the court for adoption, to order the parties, as specified, to mediate the terms of require the social study to also contain a specified discussion regarding the parent's option to enter into a postadoption contact agreement, thereby imposing new duties on local personnel and creating a state-mandated local program. The

The bill would direct the Judicial Council to adopt specified rules of court and forms by July 1, 2001, and direct the State Department of Social Services to adopt specified regulations by July 1, 2002.

By authorizing agreements in additional cases, the instances in which local adoption agencies would be required to consider the effect of these agreements in connection with the adoption reports would be increased, thus creating a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do

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not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- SECTION 1. Section 8714 of the Family Code is 1 amended to read:
- 8714. (a) A person desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for 10 11 adoption.
- (b) The court clerk shall immediately notify the 13 department in Sacramento in writing of the pendency of the proceeding and of any subsequent action taken. 14

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- (c) If the petitioner has entered into a postadoption 16 contact agreement with the birth parent as set forth in Section 8714.7, the agreement, signed participating parties, shall be attached to and filed with 18 the petition for adoption described in subdivision (a).
- 20 (d) The caption of the adoption petition shall contain 21 the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth. 23 The name the child had before adoption shall appear in 24 the joinder signed by the licensed adoption agency.
- (e) If the child is the subject of a guardianship petition, 25 the adoption petition shall so state and shall include the 26 caption and docket number or have attached a copy of 27 guardianship 28 of the or temporary guardianship. The petitioners shall notify the court of any

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petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

- (f) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.
- 7 SEC. 2. Section 8714.5 of the Family Code is amended 8 to read:
- 9 8714.5. (a) The Legislature finds and declares the 10 following:
- (1) It is the intent of the Legislature to expedite legal 12 permanency for children who cannot return to their parents and to remove barriers to adoption by relatives 14 of children who are already in the dependency system or who are at risk of entering the dependency system.
- (2) This goal will be achieved by empowering families, 17 including extended families, to care for their own 18 children safely and permanently whenever possible, by 19 preserving existing family relationships, thereby causing 20 the least amount of disruption to the child and the family, 21 and by recognizing the importance of sibling half-sibling relationships.
- (b) A relative desiring to adopt a child may for that 24 purpose file a petition in the county in which the 25 petitioner resides. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and thereafter has 28 been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner 30 resides or in the county where the child was freed for adoption.
- For For purposes of this section, "relative" means an adult who is related to the child or the child's half sibling by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand," or the spouse of any of these persons, even if the 37 marriage was terminated by death or dissolution.
- (c) Upon the filing of a petition for adoption by a 38 relative, the county clerk shall immediately notify the State Department of Social Services in Sacramento in

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writing of the pendency of the proceeding and of any subsequent action taken.

- (d) If the adopting relative has entered into a postadoption contact agreement with the birth parent as set forth in Section 8714.7, the agreement, signed by the participating parties, shall be attached to and filed with the adoption petition.
- (e) The caption of the adoption petition shall contain the name of the relative petitioner. The petition shall 10 state the child's name, sex, and date of birth.

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- (f) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of letters of guardianship the the or temporary guardianship. The petitioner shall notify the court of any 16 petition for adoption. The guardianship proceeding shall 17 be consolidated with the adoption proceeding.
 - (g) The order of adoption shall contain the child's adopted name and, if requested by the adopting relative, or if requested by the child who is 12 years of age or older, the name the child had before adoption.
- SEC. 3. Section 8714.7 of the Family Code is amended 23 to read:
- 8714.7. (a) Nothing in the adoption laws of this state 25 shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, and the child from entering into a written agreement to permit continuing contact between the birth relatives, including the birth parent or parents, and 30 the child if the agreement is found by the court to be in the best interest of the child at the time the adoption petition is granted. The terms of any postadoption contact agreement executed under this section shall be limited to, but need not include, all of the following:
- (1) Provisions for visitation between the child and a 36 birth parent or parents and other birth relatives, 37 including siblings.
- (2) Provisions for future contact between a 38 birth 39 parent or parents or other birth relatives, including

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siblings, or both, and the child or an adoptive parent, or

- (3) Provisions for the sharing of information about the child in the future.
- (b) At the time an adoption decree is entered pursuant to a petition filed under Section 8714 or 8714.5, the court entering the decree may grant postadoption privileges when an agreement for those privileges has been entered into pursuant to subdivision (a).
- (c) This section is applicable only to the following agreements:
- (1) Postadoption contact agreements in which the 13 adopting parent is a relative of the child or a relative of 14 the child's half-sibling and the adoption petition is filed under Section 8714 or 8714.5. For purposes of this section, "relative" means an adult who is related to the child or 17 the child's half sibling by blood or affinity, including all 18 relatives whose status is preceded by the words "step," 19 "great," "great-great," or "grand," or the spouse of any of 20 these persons, even if the marriage was terminated by death or dissolution.
- (2) Postadoption contact agreements in which 23 child is a dependent child of the juvenile court who has been freed for adoption, whether or not the adopting parent is a relative of the child or a relative of the child's 26 half-sibling.
- (d) The child who is the subject of the adoption 28 petition shall be considered a party to the postadoption contact agreement. The written consent to the terms and 30 conditions of the postadoption contact agreement and any subsequent modifications of the agreement by a child 32 who is 12 years of age and older is a necessary condition to the granting of privileges regarding visitation, contact, 34 or sharing of information about the child, unless the court 35 finds by a preponderance of the evidence that the 36 agreement, as written, is in the best interest of the child. Any child who has been found to come within Section 300 38 of the Welfare and Institutions Code or who is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code shall be

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represented by an attorney for purposes of consent to the postadoption contact agreement.

(e) A postadoption contact agreement shall contain the following warnings in bold type:

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- (1) After the adoption petition has been granted by 6 the court, the adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, or the child to follow the terms of this agreement or a later change to this agreement.
 - (2) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.
 - (3) A court will not act on a petition to change or agreement unless the petitioner enforce this participated, or attempted to participate, in good faith in mediation other appropriate dispute or resolution proceedings to resolve the dispute.
- 18 (f) Upon the granting of the adoption petition and the 20 issuing of the order of adoption of a child who is a 21 of juvenile court, juvenile dependent the 22 dependency jurisdiction shall be terminated. 23 Enforcement of the postadoption contact agreement shall be under the continuing jurisdiction of the court 25 granting the petition of adoption. The court may not 26 order compliance with the agreement absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith in mediation or proceedings appropriate dispute resolution 30 regarding the conflict, prior to the filing 31 enforcement action, and that the enforcement is in the 32 best interest of the child. Documentary evidence or offers of proof may serve as the basis for the court's decision 34 regarding enforcement. No testimony or evidentiary 35 hearing shall be required. The court shall not order 36 further investigation or evaluation by any public or private agency or individual absent a finding by clear and 38 convincing evidence that the best interest of the child may be protected or advanced only by that inquiry and

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that the inquiry will not disturb the stability of the child's home to the detriment of the child.

- (g) The court may not award monetary damages as a result of the filing of the civil action pursuant to subdivision (f) of this section.
- postadoption contact agreement (h) A may modified or terminated only if either of the following occurs:
- (1) All parties, including the child if the child is 12 10 years of age or older at the time of the requested termination or modification, have signed a modified postadoption contact agreement and the agreement is 13 filed with the court that granted the petition of adoption.
 - (2) The court finds all of the following:
- (A) The termination or modification is necessary to 16 serve the best interest of the child.
- (B) There has been substantial change of 18 circumstances since the original agreement was executed and approved by the court.
- (C) The party seeking the termination or modification 21 has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings prior to seeking court approval of the proposed termination or modification.

Documentary evidence or offers of proof may serve as 26 the basis for the court's decision. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and 30 convincing evidence that the best interest of the child may be protected or advanced only by an inquiry and that 32 the inquiry will not disturb the stability of the child's home to the detriment of the child.

(i) All costs and fees of mediation or other appropriate 35 dispute resolution proceedings shall be borne by each 36 party, excluding the child. All costs and fees of litigation shall be borne by the party filing the action to modify or enforce the agreement when no party has been found by the court as failing to comply with an existing postadoption contact agreement. Otherwise, a

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other than the child, found by the court as failing to comply without good cause with an existing agreement shall bear all the costs and fees of litigation.

(j) By July 1, 2001, the Judicial Council shall adopt rules of court and forms for motions to enforce, terminate, or modify postadoption contact agreements.

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- (k) The court shall not set aside a decree of adoption, rescind a relinquishment, or modify an order to terminate parental rights or any other prior court order because of 10 the failure of a birth parent, adoptive parent, birth relative, or the child to comply with any or all of the original terms of, or subsequent modifications to, the postadoption contact agreement.
- SEC. 4. Section 8715 of the Family Code is amended 15 to read:
- 8715. (a) The department or licensed adoption agency, whichever is a party to or joins in the petition, 18 shall submit a full report of the facts of the case to the
- (b) If the child has been adjudged to be a dependent 21 of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been 23 freed for adoption by the juvenile court, the report 24 required by this section shall describe whether the 25 requirements of subdivision (e) of Section 16002 of the 26 Welfare and Institutions Code have been completed and 27 what, if any, plan exists forg facilitation of postadoptive contact between the child who is the subject of the adoption petition and his or her siblings and half-siblings.
- 30 (c) Where a petition for adoption by a relative has filed with a postadoption contact pursuant to Section 8714.7, the report shall address whether the postadoption contact agreement is in the 34 best interest of the child who is the subject of the petition. 35 The department may also submit a report in those cases 36 in which a licensed adoption agency is a party or joins in 37 the adoption petition.
- SEC. 5. Section 366.265 is added to the Welfare and 38 39 Institutions Code, to read:

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366.265. Prior to any hearing to terminate parental rights for the purpose of freeing a child for adoption pursuant to Section 366.26, the court may order the birth parent or parents, the child, the department, and the 5 adoptive parent or parents to mediate the terms of a postadoption contact agreement, as provided in Section 8714.7 of the Family Code, if the court, in its discretion, 8 finds that such an agreement would be in the best interest 9 of the child.

- SEC. 5. Section 358.1 of the Welfare and Institutions 10 11 Code is amended to read:
- 358.1. Each social study or evaluation made by a social 13 worker or child advocate appointed by the court, 14 required to be received in evidence pursuant to Section 15 358, shall include, but not be limited to, a factual 16 discussion of each of the following subjects:
- (a) Whether the county welfare department or social 18 worker has considered child protective services, defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered these services to qualified parents if appropriate under the circumstances.
- (b) What plan, if any, for return of the child to his or 24 her parents and for achieving legal permanence for the 25 child if efforts to reunify fail, is recommended to the court by the county welfare department or probation officer.
- (c) Whether the best interests of the child will be 28 served by granting reasonable visitation rights with the child to his or her grandparents, in order to maintain and strengthen the child's family relationships.
 - (d) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.
- 34 (e) Whether the parent has been advised of his or her option to participate in adoption planning, including the 35 36 option to enter into a postadoption contact agreement as described in Section 8714.7 of the Family Code, and to voluntarily relinquish the child for adoption if 38 adoption agency is willing to accept the relinquishment.

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1 (f) The appropriateness of any relative placement 2 pursuant to Section 361.3; however, this consideration 3 shall not be cause for continuance of the dispositional 4 hearing.

- 5 SEC. 6. The State Department of Social Services shall 6 adopt regulations as necessary to implement the 7 provisions of this act no later than July 1, 2002.
- SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from

17 the State Mandates Claims Fund.